

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA

v.

2:07CR165

DERRICK EUGENE NICHOLAS

Defendant.

REPORT AND RECOMMENDATION
CONCERNING GUILTY PLEA

Defendant, by consent, has appeared before the undersigned pursuant to Rule 11, Federal Rules of Criminal Procedure, and referral from a United States District Judge and has entered a guilty plea to being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g) and 924(a)(2). On February 15, 2008, defendant appeared before the Court for the purpose of entering his guilty plea. Defendant was represented by appointed counsel, Rebecca S. Colaw, Esquire.

Defendant was appropriate in appearance, responsive, and competently prepared for the hearing. He answered all questions put to him in clear and concise language. On those occasions when he had a question, defendant consulted with counsel and then promptly answered. During the colloquy, defendant raised an issue of police conduct, which was reflected in a motion to suppress filed by counsel. Defendant stated that he decided not to go forward with the issue and wished to accept responsibility for his actions. Counsel confirmed that defendant independently made the decision to not go forward on the suppression motion, and he asked her to pursue a guilty plea on his behalf. The Court is satisfied that there is no outstanding issue which flows from the motion to suppress. Counsel candidly stated that the motion would

not have been successful and that defendant desired to accept responsibility. Defendant was courteous and appropriate in his behavior at all times and clearly understood the seriousness of his position. At the close of the proceeding, defendant was remanded to the custody of the United States Marshal, pending completion of a presentence report.

Defendant is twenty-four years of age, attended high school through the eleventh grade, and speaks English as his native language. There was no evidence that defendant was on drugs, alcohol, or medication which might impair his judgment. He was cooperative throughout the proceeding.

Defendant entered his guilty plea pursuant to a plea agreement. The Court is completely satisfied, based upon defendant's responses, that he fully appreciates his position. Furthermore, he acknowledged that the statement of facts prepared in anticipation of his plea accurately reflects the government's evidence, in the event of trial.

After cautioning and examining defendant under oath concerning each of the subjects mentioned in Rule 11, the Court determined that the offense charged is supported by independent facts, establishing each of the essential elements of such offense. Therefore, the Court recommends that the guilty plea be accepted and that defendant be adjudged guilty and have sentence imposed accordingly.

Failure to file written objections to this report and recommendation within ten days from the date of its service shall bar an aggrieved party from attacking such report and recommendation before the assigned United States District Judge. 28 U.S.C. § 636(b)(1)(B).

Norfolk, Virginia

February 19, 2008

/s/
James E. Bradberry
United States Magistrate Judge